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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications Issued by Central Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 7 फरवरी, 1991

आ.प्र. 40.—निर्वाचन आयोग का समाधान हो गया है कि फरवरी 1990 में विधान सभा के लिए हुए साधारण निर्वाचन में पॉन्डिचेरी संघ राज्य-क्षेत्र में 14-थिरुवुवानाई (प्र.जा.) विधान सभा निर्वाचन क्षेत्र से निर्वाचन लड़ने वाला अभ्यर्थी श्री के.के. सेकर, न्यू कोलोनी, सेलीपेट, पॉन्डिचेरी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा सड़ोन बनाए गए नियमों द्वारा अपेक्षित अपना निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहा है;

और, उक्त अभ्यर्थी ने, सम्यक सीका दिए जाने पर भी, उक्त असफलता के लिए न तो कोई कारण व स्पष्टीकरण ही दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः, अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में, उक्त अभ्यर्थी श्री के.के.सेकर को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद्

के सदस्य चुने जाने और होने के लिए आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं. 76/पॉन्डिचेरी-91]

ELECTION COMMISSION OF INDIA ORDERS

New Delhi, the 7th February, 1991

O.N. 40.—Whereas the Election Commission is satisfied that Shri K. K. Sekar, New Colony, Sellipet, Pondicherry, a contesting candidate at the General Election to the Legislative Assembly held in February, 1990 from 14-Thirubuvanai (SC) assembly constituency in the Union Territory of Pondicherry has failed to lodge any account of his election expenses at all as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas the said candidate, even after due opportunity, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the said candidate Shri K. K. Sekar to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for period of three years from the date of this order.

[No. 76/POND/91]

ध.प्र. 41:—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट लोक सभा के निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्विनिर्दिष्ट कानून द्वारा, अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शात अपने निर्वाचन व्ययों का लेखा अपेक्षित रीति से प्रेषित करना बिल्कुल ही वांछित करने में असफल रहा है,

और, उक्त अभ्यर्थियों ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए न तो कोई कारण और न ही स्पष्टीकरण दिया है या उनके द्वारा दिए गए अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या व्याख्यान नहीं है,

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहिता घोषित करता है।

O.N. 41.—Whereas the Election Commission is satisfied that the contesting candidates specified in column (4) of the Table below at the election to the House of the People specified in Column (2) and held from the constituency specified in column (3) against his name has not lodged the account in the manner or has not lodged the account at all as shown in column (5) of the said Table, as required by the Representation of the People Act, 1951 and the Rules made thereunder:

And, whereas, the said candidates have not furnished any reason or explanation for the said failure even after due notice, the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

सारणी				
क्र.सं.	निर्वाचन का विवरण	निर्वाचन-क्षेत्र की क्र. सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहिता का कारण
1	2	3	4	5
1.	केरल राज्य से लोक सभा के लिए साधारण निर्वाचन, 1989	11-गुरुनाकुलम	1. श्री सी. के. बालाकृष्णन नेटुम-कुल गारा हाउस कुमुमगिरि डा. कोचीन-682030 2. श्री के.बी. मुरैग, ---वही--- कोच्चुपारम्बिल हाउस मानमथुरुथु, वरपूझाडा	लेखा दाखिल नहीं किया
2.	---वही---	12 मुवाट्टुपूझा	1. श्री नाइसमन मैथ्यु, थाकादियेल थिकामाड डा. (केरल) 2. श्री मैथ्यु मय्याई लेखा अपेक्षित शोलयिलापाकल रीति से दाखिल कोसवानल डा. नहीं किया (केरल)	---वही---
3.	---वही---	13 कोट्टायम	श्री पाल चिराकासेट्टु उदय चिलासम, नेयारवम कोट्टायम (केरल)	लेखा दाखिल नहीं किया

[सं. 76/केरल-90]

आदेश से,
के.पी.जी. कुट्टी, सचिव

TABLE

S. No.	Particulars of election	S.No. and name of Constituency	Name and Address of Contesting candidate	Reasons for disqualification.
1	2	3	4	5
1.	General Election to the House of the People, 1989 from Kerala State.	11-Ernakulam	1. Shri C.K. Balakrishnan, Nedumkulangara House, Kusumagiri P.O. Cochin-682030 2. Shri K.V. Suresh Kochuparambil House, Mannanthuruthu Varapuzha P.O.	Account not lodged -do-
2.	-do-	12-Muvattupuzha	1. Shri Nicemon Mathew Thakadiyel, Thicanad P.O. Kerala. 2. Shri Mathew Mathai, Cholayllaplackal, Kozhuvanal P.O. Kerala.	-do- Account not lodged in the manner required.
3.	-do-	13-Kottayam	Shri Paul Chirakarodu, Udaya Vilasam, Neyyardam, Kottayam (Kerala)	Account not lodged

[No. 76-KL/90]

By Order,

K.P.G. KUTTY, Secy.

आदेश

नई दिल्ली, 7 फरवरी, 1991

आ.प्र. 42. -निर्वाचन आयोग का समाधान हो गया है कि पंजाब राज्य में 1989 में हुए लोक सभा के साधारण निर्वाचन में 12-फरीदकोट संसदीय निर्वाचन क्षेत्र में निर्वाचन लड़ने वाला श्री हरि किशन, वार्ड नं. 12, मखौट, तहसील मुक्तसर विधि द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहा है ;

और उक्त अभ्यर्थी ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए न तो कोई कारण और न ही स्पष्टीकरण दिया है या उसके द्वारा दिए गए अभ्यावेदन पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उसके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है ;

अतः अब, निर्वाचन आयोग लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 10-क के अनुसरण में उक्त श्री हरि किशन को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है ।

[संख्या 76/पंजाब-नॉ०ग० / 90(7)]

आदेश से,

घनश्याम खोहर, अधीक्षक सचिव

ORDER

New Delhi, the 7th February, 1991

O.N. 42.—Whereas the Election Commission is satisfied that Shri Hari Kishan, Ward No. 12 Malout Tehsil, Mukhtar a contesting candidate at the General Election to the House of the People from the State of Punjab held in 1989 from 12-Faridkot Parliamentary Constituency has failed to lodge any account of election expenses as required by law ;

And whereas the said candidate has either not furnished any reason or explanation for the said failure even after due notice or the Election Commission after considering the representation made by him if any, is satisfied that he has no good reason or justification for the said failure ;

Now, therefore, in pursuance of Section 10A of the Representation of the People Act, 1951, the Election Commission hereby declares the said Shri Hari Kishan to be disqualified for being chosen as and for being a member of either House of Parliament or of Legislative Assembly or Legislative Council of State/Union Territory for a period of 3 years from the date of this Order.

[No. 76/PB-HP/90 (7)]

By Order

GHANSHYAM KHOHAR, Under Secy.

नई दिल्ली, 22 फरवरी, 1991

आ.अ. 43.—निर्वाचन आयोग संसदीय निर्वाचन-श्रेय से लोक सभा के लिए श्री उत्तमराव लक्ष्मणराव पाटिल के निर्वाचन का प्रथमगत करते हुए 1990 की निर्वाचन प्रज्ञा सं. 4 में बम्बई उच्च न्यायालय औरंगाबाद बेंच के तारीख 19-12-1990 के निर्णय प्रदेश को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में इसके द्वारा प्रकाशित करता है।

(संलग्न निर्णय/प्रदेश यहां अंग्रेजी में छपा है)

[सं. 82/महा. -लोक सं. 4/90]

एस. के. पाण्डे, अवसर सचिव

New Delhi, the 22nd February, 1991

O.N. 43.—in pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgement Order dated 19th December, 1990, of the High Court of Judicature at Bombay (Aurangabad Bench) in Election Petition No. 4 of 1990. Calling in question the Election of Shri Uttamrao Laxmanrao Patil to the House of People from 16-Erandol Parliamentary Constituency.

[No. 82|MT-HP|4|90]

S. K. PANDEY, Under Secy.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

ELECTION PETITION NO. 4|1990.

Petitioner :

1. Prof. Vishram Girdhar Patil.

Versus

Respondents :

1. Uttamrao Laxmanrao Patil.
2. Dr. Madhukarrao Atmaram Patil.
3. A. Hakeem A. Rahman.
4. Umakant Hemraj Choudhari.
5. Navnvare Digamber Awchit.
6. Sadhashiv Daulat Khairnar.
7. Popatlal Fulchand Jain.
8. Gorakh s/o Raghunath Patil.
9. Dhannasing s/o Ramu Patil.
10. Laxman Dadaji Patil.
11. Raghunath s/o Ganpat Sonawane.
12. Vishwasrao Bhaurao Yerande.
13. Vijay Naval Patil.
14. The Returning Officer, for 16 Erandol Parliamentary (Loksabha) Constituency and the Collector, District Jalgaon.

S^dShri M. V. Paranjape and V. N. Ganpule, counsels and Shri Pradeep Deshmukh, Adv.

with Shri R. G. Karmarkar, Adv. for the Petitioner.

Shri A. H. Joshi, Adv. for Resp. No. 1. Shri K. H. Dhuldewaj, A.G.P. for Resp. No. 14. Respondent Nos. 2 to 13 served. Shri G. G. Deshpande, Adv. for R. Nos. 5, 6, 7, 9 & 11.

CORAM : A. A. HALBE, J.

19TH DECEMBER, 1990.

JUDGMENT :

Having been denied the right to contest the Parliamentary Elections from 16-Erandol Lok Sabha Constituency held on 24-11-1989 on the ground that the petitioner was holding office of profit, the petitioner has preferred this election petition on the ground that although he is the District Commandant Home Guards, district Jalgaon, he does not hold any office of profit and that all that is paid to him is conveyance allowance of Rs. 120 per month. The petitioner claims to be an active social worker and also political worker popular amongst the people of Jalgaon and resident of Parola taluka, situated within the Erandol Lok Sabha Constituency. He has been the District Commandant Home Guards since May, 1986. This post is an honorary post under the Home Guards Organization of the State of Maharashtra. It comprises of volunteers for protection of public peace. The Home Guards Organization is meant for protection of public peace and tranquillity and also to help the police in the event of emergency and natural calamities. This organization is constituted under Bombay Home Guards Act, 1947.

2. The petitioner submitted his nominations for the above election on 28-10-1989 at Sr. Nos. 26 and 27. The election results were out on 27-11-1989 and respondent no. 1 was declared elected. The nomination of the petitioner was rejected by the Returning Officer on the ground that he was holding office of profit as District Commandant Home Guards. This, according to the petitioner, was wholly wrong on the part of the Returning Officer because the petitioner used to receive conveyance allowance of Rs. 100 per month, admittedly raised to Rs. 120 p.m. The petitioner has contended that as a member of the Home Guard organization, he is not disqualified from contesting the election under section 3 (d) of the Parliament (Prevention of Disqualification) Act, 1959. It is further alleged that the petitioner was not heard on the date of the scrutiny of the nominations and that his nomination was rejected without any rhyme or reason. The post of the District Commandant Home Guards is an honorary post, which carries conveyance allowance only to meet out of the pocket expenses and hence he has prayed that the election of respondent no. 1 should be declared null and void and that the order of rejection of his nomination paper by respondent no. 14 should be declared as illegal and contrary to the provisions of law and that fresh election should be ordered in the above Constituency.

3. The respondent no. 1 in his written statement at Ex. 4 has denied the allegations of the petitioner and has contended that the Home Guard Organization is not a voluntary organisation. It is an organisation constituted under the Bombay Home Guards Act, 1947 and the services thereunder are of short tenure and available to the State Government on the members called up for that purpose. The Home Guards on duty are duly remunerated and are treated as on duty, they are the public servants and that the District Commandant Home Guards is the holder of office of profit. The petitioner is also provided with the jeep vehicle for his exclusive use and thus the petitioner is the holder of the office of profit under the State Government. The above Parliamentary Legislation does not include the petitioner in the exempted category. The petitioner was present when his nomination was rejected and he did not object then and hence the petition deserves to be dismissed. There are the technical defence regarding non-supply of copy, the same need not be considered at this stage nor the same has been pressed on behalf of respondent no. 10.

4. Respondent no. 14—the Returning Officer has filed written statement at Ex. 5. He has contended that the petitioner was directed to produce the pay slip on the day of the scrutiny, but as the Indian National Congress (Congress-D) had set up Vijay Naval Patil respondent no. 13 as the official candidate, the petitioner stated before him that he was not interested in contesting the election and thus did not produce the pay slip. It is also stated that the petitioner is holding the post of District Home Guard Commandant in Jalgaon District and hence the disqualification is attached to him as being the holder of office of profit and is, therefore, not entitled to benefit of exemption under the Parliament (Prevention of Disqualification) Act, 1959. It is also stated that the Government Jeep BLB 4574 is at the disposal of the petitioner and the same is allotted to him for the purposes of his duties. The Home Guards were posted on 361 polling stations during the above Erandol Parliamentary Constituency election and hence there was every possibility of those Home Guards acting under the undue influence of the petitioner at those polling booths and hence as the petitioner is holding the office of profit, his petition deserves to be dismissed.

5. On these pleadings the issues are framed at Ex. 6 :

- (i) Whether the petitioner proves that as a member of the Home Guard his nomination to the election was improperly rejected by respondent no. 14 ?
- (ii) Whether the petitioner is entitled to declaration that election of respondent no. 1 is void and that the fresh election should be ordered ?
- (iii) What order "

My findings thereon are as under :

- (i) Yes (ii) Yes (iii) As per the order.

6. In this petition, no evidence has been led on behalf of the respondents. Petitioner—Vishram Girnar Patil has been examined at ex. 15. He has also produced various Circulars and Government Resolutions in regard to his appointment and removal. He has stated that he was appointed as a District Commandant Home Guards under Order Ex. 60, dated 25th April, 1986. This appointment is for an indefinite period and the same will remain in force till it is either revoked or terminated. He has been working as a member of the Home Guard since 1976, but he ceased to be the member from 1979 till 6-5-1986, the date on which he took charge as District Home Guard Commandant. He has produced the Identity Card, the xerox copy of which is at Ex. 17 and it bears the serial number 1734 of the member of the Home Guards. He has stated that he is entitled to conveyance allowance of Rs. 100, which has been raised to Rs. 120 per month. But besides this amount, he is not entitled to any other remuneration, allowance or honorarium. Regarding the mode of payment, he has stated that he normally receives pay slip for this allowance at an interval of six months, but he is required to spend for the travel in advance and for that purpose he has to maintain conveyance allowance diary showing the distance he has travelled for the discharge of his duties. The extract of this diary has to be forwarded to the Commandant General Bombay and after the verification by that authority and after the approval by him the said authority directs the issue of pay slip for conveyance allowance to the Accountant General, which issues the pay slip after verifying the correctness of the journeys and the travelling allowance claimed. He has stated that it never happens that he is not required to undertake any Journey. In case of leave or absence his assistant performs the duties on his behalf and he is entitled to the T.A. and D.A.

7. He has stated that he is required to hold camp outside the Headquarters and he is entitled to T.A. and D.A. The bills are prepared by the Staff Officer, who is designated as Drawing and Disbursing Officer, but it is made clear that he is not entitled to draw any allowance either by way of remuneration or honorarium. He has also stated that Jeep No. BLB 4574 has been allotted by the Commandant General to Jalgaon Commandant Office for the purposes of Home Guard and this jeep has to be utilized strictly in terms of Circular, the xerox copy of which is at Ex. 18. The jeep vehicle cannot be used for any purpose. He has emphasized that he was never used this vehicle for his private use. This vehicle is maintained as per budgetary sanction earmarked for the year and the Disbursing Officer looks after the maintenance of this vehicle. The District Commandant, other Officers of the Home Guard and the members of the Home Guard are also entitled to use this vehicle for official purposes and the log book has to be maintained to show the movements of the vehicle. The extract of the log book has to be forwarded to the Commandant General every month. He is required to counter-sign the vouchers submitted by the Disbursing Officer, as also the bills submitted to the Treasury regarding the jeep. He has lastly stated that Home Guard is a voluntary organisation created under the Statute and that he is doing the social work and is entitled to draw maximum conveyance allowance of Rs. 120 per month, although on some occasions he may be required to spend more than that amount.

8. In the cross-examination, Patil has given the hierarchy in the organisation, at the top there is Commandant General, below him District Commandant, then Seconding Commandant, Adjutant, Company Commandant, Senior Platoon Officer, Platoon Officers, Company Quarter Master Sargent, Sargent, Section Leader, Assistant Section Leader and at the lowest rank Home Guards. This organisation is under the Home Department of the State Government and the separate budget is provided for this. The estimate for the district is about Rs. 25 lakhs per year. He has admitted that this organization is a akin to the para-military organization. The Home Guards are supplementary to police in performance of their functions and that when their services are requisitioned by the police, the Home Guards and Officers perform the same functions and duties as police. The District Commandant is now equated with the Additional Commissioner of Police or Additional Superintendent of Police at the headquarters. Their duties are mentioned in various Rules, Notifications, Government Circulars and also in the Act. Their services are requisitioned when the law and order is in jeopardy and when riot, natural calamities, strikes take place. They are the duties to be performed during emergency. He has stated that he is required to carry out the requisition sent by the District Magistrate. Regarding the T.A. and D.A. he has stated that it might be around 5 to 7 thousand per annum. The office is in possession of this T.A. and D.A. His counter signature is required on all the bills which are prepared by the Disbursing Officer. He also admits that Home Guards are requisitioned at the time of elections. They are paid allowance.

9. Regarding his position, he has stated that he is the Professor in Nutan Maratha College. He is also the General Secretary of the District Congress Committee, Jalgaon. He is the District Trainer appointed by All India Congress Committee. He is also the Chairman of some view, Co-operative Societies and he is also the President of Prantiya Rashtriya Motor Kamgar Union, which is affiliated to INTUC, which in turn is affiliated to A.I.C.C. He has lastly stated that he is allotted Government Telephone, the bills of which are paid by the Home Guard Office, but this telephone has to be used only for office purposes. He has further stated that the jeep is under the control of the office. He has referred to some documents, to which I shall refer while discussion about the office of profit.

10. The learned Counsel for the Petitioner has urged that in the face of above clinching evidence, it can by no stretch of imagination be said that the post of the District Commandant in the Home Guards Organization is a paid office. Further it is also stated that even if for a moment it is assumed that it is an office of profit, still the same is exempted under section 3(d) of the Parliament (Prevention of Disqualification) Act, 1959. There is a specific declaration that the office of member of the Home Guards constituted under any law for the time being in force in any State, shall not disqualify the holder thereof for being chosen as member of the Parliament. The argument is thus canvassed both ways, namely, under the above Act no disqualification attaches to the petitioner and in case it does attach, the petitioner does not hold office of profit in view of the allowance

namely the conveyance allowance only being paid to him. He has drawn my attention to the definition of compensatory allowance, which includes the conveyance allowance, house rent allowances or travelling allowance for the purposes of enabling the holder of the office to recoup any expenditure incurred by him in performance of the functions of that office. It is, therefore, urged that there is on record the pay slip about the conveyance allowance paid to the petitioner for Rs. 100 per month and hence even from that point of view, the petitioner does not come within the mischief of disqualification. This has been countered by the learned advocate for the respondent no. 1, as also the learned Assistant Government Pleader. It is stated that what is contemplated for exemption is the office of member of the Home Guards and not the office of District Commandant. District Commandant is appointed by the State, he carries with him certain privileges and certain onerous duties, he is paid T.A. and D.A. and this office of District Commandant is altogether separate and on a distinct footing from the office of the member of the Home Guards and that their spheres of activities are clearly mentioned in the Bombay Home Guards Act, 1947 and the Rules framed thereunder and in view of these circumstances, the petitioner is not entitled to exemption and that he has been rightly disqualified by the Returning Officer as holding the office of profit.

11. The admitted facts are that the petitioner filed nominations vide Exhs. A-1 and A-2. His nomination has been rejected by the Returning Officer vide the orders appended to Exh. 23 and it is distinctly mentioned that the petitioner is holding a office of profit as the District Commandant Home Guards and that his nomination was rejected. The order is dated 1-11-1989.

12. Going back to the Act of 1959, under section 3(d) it is clearly laid down that the office of the member of the Home Guard shall not disqualify the holder of that office. Now in the first instance, it is to be observed that the petitioner is holding office under the State Government. In that behalf, my attention has been drawn to section 2 which provides for the constitution of the Home Guards and the appointment of the District Commandant by the State. It is provided that the State Government shall appoint Commandant of each Home Guards and that the Commandant shall have authority to appoint the members of the Home Guards. The organization comprises of various categories, to which the petitioner has made reference in his evidence at Ex. 15 and incidentally the categories are to be found in the Rules framed under Home Guards Act. At the top of the hierarchy, there would be Commandant General, below him there would be District Commandant, namely the Commandant appointed for the area, there would be then Seconding Commandant, Adjutant, Senior Divisional Commanders, such Staff Officer as the Commandant may consider necessary, Divisional Commanders, Company Commanders, Senior Platoon Officers, Platoon Officers, Sargent Leaders, Quarter Master Sargents, Platoon Sargents, Section Leaders, Assistant Section Leaders and at the bottom the Home Guards. It is, therefore, strenuously urged on behalf of the respondent No. 1 that there is a distinct category of member of Home Guards who are to be ap-

pointed under section 3 of the Bombay Home Guards Act, 1947. Whereas the District Commandant is an appointment by the State Government under section 2(2) of the said Act, Hence what is exempted under the above Act is a member and not the District Commandant.

13. The learned advocate for the respondent has urged that an anomalous situation may arise by creating this distinction because under section 7, section 6 (b), Section 5 and Section 6, the general discipline and the penalties enforceable against the members would create a classification wherein only the members of the Home Guards would be liable for punishment, whereas the superiors namely the District Commandant would stand exempted. In this behalf it is suggested that as soon as their appointments flow through different sources, such a distinction may exist and it cannot be obliterated under the proposition that there is a distinction between two categories in the same organisation, namely the Home Guards.

14. As against this, the learned advocate for the petitioner has forcefully urged that when the law has to be interpreted the meaning assigned to the provisions must be given and no artificial distinction can be created. If the wording of the Act is clear and simple, the Court should not try to give any interpretation under the pretext that the Legislature desired when as a matter of fact no such explicit intention is visible in the wording of the section. Before going in to that aspect, it will have to be held that under section 7 the member of the Home Guard is liable to disciplinary action. He is liable to be convicted and sentenced for neglect of duty or disobedience in performance of the duty when being called out under section 4 of the said Act. Similarly, the member of the Home Guard shall also be liable for disciplinary enquiry by the Commandant. In this behalf it is urged that the disciplinary enquiry has to be conducted by the Commandant and this situation creates a different office for the Commandant. However, if section 6 (b)(i) is read even the Commandant is liable to be proceeded with in the enquiry by the Commandant General. If therefore, the member of the Home Guard is to be considered as distinct from the District Commandant, there would be apparent hostile discrimination wherein the member of the Home Guard would be liable for punishment and sentenced, whereas the District Commandant would be exonerated. It is felt that such can never be the interpretation of this section. It is well settled that, "A court cannot stretch the language of a statutory provision to bring it in accord with a supposed legislative intention underlying it unless the words are susceptible of carrying out that intention. The words are to be interpreted as they appear in the provision, simple and grammatical meaning is to be given to them and nothing can be added or subtracted. Where the words of a section in a statute are plain, the court must give effect to them, and is not justified in depriving the words of their only proper meaning in order to give effect to some intention which the court imputes to the Legislature from other provisions of the Act." It would be seen that the above Parliamentary Legislation is passed under Article 102 of the Constitution. It prescribes disabilities attached to the members holding the office

of profit. By exemption under section 3, certain categories are said to be not disqualified and while interpreting such statutes it is consistently observed by the Courts that disability in the statute must be strictly construed and that no man should be deprived of rights, which would by law belong to him unless the specific provisions of law which are alleged to have taken away these rights can be shown to apply clearly and in precise terms to his case.

15. With this background about the interpretation of statutes, the learned advocate for the petitioner has urged that the interpretation of the Parliamentary statutes has to be viewed from the intention which the Parliament has sought to put on the holders of the office, who are entitled to be exempted. In the first instance, he has urged that this is a declaratory statute and that the court should interpret from that point of view. It is urged that when one looks at section 3 of the Act, certain offices of individuals have been exempted. For instance, office of Minister, Deputy Minister of Union as well as the State, Leader of Opposition, Sheriff in the city of Bombay and other metropolitan cities, Chairman or member of the Syndicate, Senate, etc. and the member of any delegation. Now, so far as the Delegates of the mission are concerned, it is urged that their appointment is the Cabinet and that they are individuals and in none of these clauses namely clauses (a) to (b) and clauses (c) to (g) of Section 3 of the Act, there is contemplated any hierarchy of Officers. They are the individuals who are entitled to exemption, whereas clauses (c) and (d) relate to office of member of the Forces raised under various Acts and of the Home Guard. This contemplates that the entire hierarchy or organization created under the Act is exempted. This is indeed sought to be countered by the learned advocate for the Respondents by drawing my attention to the Maharashtra Legislative Members (Removal of Disqualification) Act, 1956, which is a State Legislation and wherein any office or office of organizations has been exempted. It is urged that if any office is to be exempted then the office of the member by no stretch of imagination can include the entire organization and in that light of the matter, the District Commandant is not qualified to hold the position of Member of Parliament.

16. Now, in order to appreciate this argument, it appears necessary to briefly scan through the organization created under the National Cadre Corps Act, the Home Guard organization as well as the organization created under the National Cadet Corps Act, 1948, comprises of volunteers, who volunteer to lend their services. So far as the Home Guards are concerned, the Home Guards are supposed to serve as auxiliary to the Police Force and assist the community during emergency namely floods, fire, etc., assist also the transport, communication, electricity, water, etc. and other essential services in the event of break down. They also assist in promoting communal harmony and assist the administration in protecting the weaker sections of the Society. Likewise, some other duties are also assigned to them, namely participating in socio-economic and welfare activities such as Adult Education, etc. They also function as a nucleus of Civil Defence Services and in addition to this they

perform such other duties as may be assigned by the State or the Commandant General. Now, with this voluntary duties, it is difficult to envisage that they constitute a regular force. Under section 2, the members constitute a voluntary body and that it is urged that the other officers are appointed only for the proper administration in the organization. There is not the slightest iota of evidence to show that any member of the hierarchy is in the regular service of the State Govt. Now once the member is a volunteer it can be safely assumed that his services are without any payment or consideration.

17. The word "voluntary" has been defined in legal dictionary by Mitra that a person who without obligation takes part in some transactions business, etc. and without consideration accepts the property without receiving the legal title thereto. In the Military Law it means persons who enter the military service at the time of war without compulsion. It would, therefore, include Officer, Subordinate Officer and any other Officer or other enrolled persons. Similarly, under the National Cadet Corps Act, 1948, there is no category like a member. The categories are divided into Officers and the persons enrolling themselves in the Senior or Junior Division. But this is also an organization constituted for educating the cadets from Schools and Universities for full development of character and the capacity of the leadership. In the statement of object and reasons to this Act it is clearly stated that such character development and promotion of leadership amongst the students from Colleges and Universities are necessary. It would be thus obvious that this National Cadet Corps is also a voluntary organization, because the members have to be enrolled and no recruitment is contemplated. It would mean that when the Parliamentary Legislation has used word 'member' it would mean member of all categories, irrespective of whether they are Officers or enrolled candidates. In the Territorial Army Act, 1948, the idea about the constitution of territorial army is entirely military in its character. The members of the army are drafted from the Civilians and the members of the territorial army are liable for military service. When persons are drafted to the service, the Army Act, 1948, is applicable. Suffice it to say at this stage that there is no category of members in this organization and hence the members would be all the constituents created under the said Act. The same analogy shall have to be applied to the members of Reserve and Auxiliary Air Force constituted under the Act of 1952.

18. Now reverting back to the Bombay Home Guards Act, 1947, it will have to be stated that the said Act contemplates creation of an organization to be headed by various Officers and to be assisted by the members. It is indeed a fact that the word 'member' is distinctly used in the Home Guards Act, 1947, but all the same only the lowest category under the Act cannot be within the comprehension of the Parliamentary Legislation. As indicated, the Parliamentary Legislation is of a vital importance. It seeks to qualify the holders of certain Offices of profit and hence the general meaning of word 'member' shall have to be taken into consideration. 'Member'

here would obviously mean the member of the entire organization.

19. In 1972 Bombay Law Reporter Pg. 304, in the case of Ratanji v. State of Maharashtra, this Court was seized of the matter relating to Home Guards and the Court observed that, "the organization of the Home Guards is a voluntary body, members are called upon to discharge certain functions duties in relation to protection of persons, property, etc. while on duty under section 4 of the Act, the members enjoy the same powers, privileges and protection as an office of the police, but all the same the services are rendered voluntarily and for no remuneration. "These remarks would be applicable to all the constituents of the Home Guard organization.

20. However, if the meaning sought to be canvassed on behalf of the learned advocate for the respondent No. 1 is accepted on the ground that distinct cadres exist under the Home Guards Act, the same would be brought with serious legal infirmities. As indicated the Officer would be exempted from the discipline, whereas the members would be subjected to discipline. Non-obedience thereof may invite penalty, conviction, etc. It is difficult to fathom that such an interpretation was within the mind of the Parliament. The Maharashtra Act using the word 'any office' is equivalent to word 'office of the Member of Home Guard' and no distinction worth description is seen. It is also rightly suggested by the learned advocate for the petitioner that prominent citizens enter the Home Guard Organization with the only motive of serving the society and the State in emergency situations. Some of them are appointed Commandants and some as Officers of other cadres namely Sergeants, etc. It would be, therefore, highly inequitable if such capable persons of the society are kept out from entering the affairs of the Government through the Parliament. Such a disqualification must not have been conceived at all by the Parliament. The use of the word 'member' of the Home Guard would can note the members and Officers of all the categories. In the light of above reasoning, it is difficult to countenance the argument on behalf of the respondent No. 1 that the petitioner has been rightly denied nomination. Any enquiry or research on that basis is bound to meet with the negative.

21. Alternatively it is contended by the learned advocate for the petitioner that even if the District Commandant is said to be holding office under the Government that office is not an office of profit. The learned advocate for the respondent No. 1 has contended that the Court cannot go behind the exemptions envisaged under the above Parliamentary Act. As soon as the Parliament declares certain offices as office of profit, the Court cannot examine that question. Once the Commandant of Home Guards is held to hold office of profit by expulsion from the general category of members, then the Court has no jurisdiction to enquire into that aspect. This argument can be repelled by the observations of the Supreme Court in AIR 1954 Supreme Court 653, in the case of Ravanna Subanna v. G. S. Kageeraappa. While dealing with similar provision under Mysore Legislature (Prevention of Disqualification) Act, the Court held :

"We do not think that the implication of the provision is that the offices mentioned in the schedule must necessarily be regarded as offices of profit, irrespective of the fact whether any profit is at all attached to them or not and that but for these provisions the persons holding them could not have been eligible for being chosen as members of the Legislature. The object of the section may be to grant exemption to holders of offices of certain descriptions and the provision in substance is that they will enjoy this exemption even though otherwise they might be regarded as holders of offices of profit.

In any view it cannot be argued that even if a Chairman or a member of a Government committee works in a purely honorary capacity and there is no remuneration attached to the office, he will still be regarded as a person holding office of profit in view of the provisions of the section. This provision might in our opinion have been made only out of abundant caution and nothing else.

22. The learned advocate for the respondent has also urged that the petitioner did not produce the pay slip as suggested in his written statement by the Returning Officer respondent No. 14 and hence is not entitled now to produce those documents. However, in AIR 1988 Supreme Court 1796, in the case of *Birad Mal Singhvi v. Anand Purohit*, the Supreme Court has allowed additional evidence to be adduced by the petitioner at the stage of election petition and accordingly, the petitioner has examined himself and has tendered the documents on record.

23. Normally, the Courts have laid down three tests in order to decide whether a person who holds an office of profit under the Government comes within the mischief of Article 102 or Article 191 of the Constitution of India. In AIR 1968 Allahabad 88, in the case of *Balak Ram Vaish v. Badri Prasad Avasthi*, those tests are mentioned, "(i) what authority has the power to make the appointment to the office, (ii) What authority can take disciplinary action and remove or dismiss the holder of the office and (iii) by whom and from what source is his remuneration paid."

(24) In AIR 1968 Punjab and Haryana 450, in the case of *S. Umrao Singh v. Darbarasingh and others*, the Court observed that, "(i) The office must have some profit attached to it, and (ii) The office must be an office under the Government of India or the Government of a State." Both these tests have to be satisfied and if either of them is missing then there is no disqualification. It would, therefore, mean that when the question of office of profit has to be considered under the State, it will have to be proved whether the office is under the State and whether it carries some profit. Now, so far as the office is concerned, in (1969) 2 Supreme Court Reports 422, in the case of *Mahadeo v. Shantibhai and ors.*, the office has been described as one which is meant the right and

duty to exercise an employment or a position to which certain duties are attached. An office of profit really means an office in respect of which a profit may accrue.

It is not necessary that it should be possible to predicate of a holder of an office or profit that he was bound to get a certain amount of profit irrespective of the duties discharged by him. In that case, the person was appointed to conduct the cases of Railway and was paid Rs. 5/- per adjournment. The Court held that it was an office of profit because the incumbent was required to look after the cases of the Railway was not entitled to appear against the Railway and that he was to get a particular amount by way of remuneration for seeking adjournment. The Court held that that position was an office to which the above-mentioned duties are attached. Such duties, if of public character, confirms that the holder is the holder of office.

25. Now in this case, it is undisputed that the petitioner is the holder of office under the State Government and this is explicit from the fact that the petitioner is appointed by the State Government under section 2(1), that he is to perform public duties, namely, duties in relation to the protection of persons and the security of property and the public safety. He is also subject to discipline and punishment as envisaged under the various provisions of the Act. Under the Rules, he has to receive allowance etc. as and when called up for duties and hence by no stretch of imagination it can be suggested that the petitioner is not the holder of office.

26. In AIR 1970 Supreme Court 694, in the case of *Smt. Kanta Kathuria v. Manak Chand Surana*, the Court was pleased to observe in the following words :

"Now it is argued, and to my mind argued most forcibly, that that shows that what those who use the language of the Act of 1942 meant, when they spoke of an office or employment which was a subsisting, permanent, substantive position which had an existence independent from the person who filled it, which went on and was filled in succession by successive holders, and if you merely had any man who was engaged on whatever terms, to do duties which were assigned to him, his employment to do those duties did not create an office to which those duties were attached. He hereby was employed to do certain things and that is an end of it, and if there was no office or employment existing in the case as a thing, the so-called office or employment was merely an aggregate of the activities of the particular man for the time being."

The Court observed that the word 'Office' is of an indefinite content. It has various meanings, but it is an office which is an independent of the persons. It is an office which has continuity, permanency. Of course

There is no dispute that the daily allowance and travelling allowance payable to the members would not make the membership of the Wage Board an office of profit. That come within the definition of the words "commensatory allowance" found in item 11, Schedule I read with Section 2 of the Bombay Legislature Members (Removal of Disqualifications) Act, 1956."

30. The ratio, therefore, that can be deduced from the views expressed by the Supreme Court in various Rulings is that when an incumbent is paid T.A. and D.A. or even both still it may not give any pecuniary gain to the holder. The learned advocate for the respondent has drawn my attention to AIR 1969 Allaha-bad 88, in the case of Balak Ram Vaish v. Badri Prasad Avasthi, wherein the Court held that the Ad-jutant appointed to the Force of U.P. Home Guards was holding an office of profit. However, on reading the judgment, it would be seen that the incumbent was not appointed under the Home Guards Act and that he was paid the remuneration for the services. The said payment was neither a stipend nor an allow-ance by way of meeting out pocket expenses. It was a consolidated sum paid every month. It was, there-fore, in the nature of remuneration and the Court, therefore, rightly held that the holder was the holder of office of profit under the Government.

31. In AIR 1958 Bombay 314 in the case of Dr. Deorao Laxman Anarde v. Keshav Laxman Borkar, this Court dwelt at length on the question of office of profit. The incumbent was the Insurance Medical Practitioner under the Employees State Insurance Act. The incumbent was allotted certain number of cases of persons for medical check up. He was paid Rs. 6 per patient. The number of patients was about 1800 and the Court after elaborate consideration of the Employees State Insurance Corporation came to the conclusion that the incumbent was holder of office of profit under the Act. This appointment was liable to be terminated by the Sargent General acting on behalf of the State. Per patient payment of Rs. 6 was treated as payment to which he was entitled to in view of occupying a peculiar position created under the statute. The Court, therefore, rightly held that it was an office of profit under the State Government. However, the question of pec-uniary gain was given the same meaning which Sup-reme Court gave in its latter decisions.

32. The learned advocate for the respondent has also drawn my attention to AIR 1984 Supreme Court 385, in the case of Biharilal Dobray v. Rosan Lal Dobray and has pointed out that the petitioner is holding an important position, to which I shall come later, and that his duties are likely to conflict with his duties as the member of the House. How-ever, in the above Ruling, the question of salary paid to the incumbent was not in dispute. The Court made the following observations :—

“An Assistant Teacher employed in a Basic Primary School run by the Uttar Pradesh Board of Basic Education constituted under the Uttar Pradesh Basic Education Act, 1972 (U.P. Act No. 34 of 1972) is di-qualified for being chosen as a member of the State Legislative Assembly under Art. 191(1)(a) of the Constitution.

The object of enacting Art. 191(1)(a) is that a person who is elected to a Legislature should be free to carry on his duties fearlessly with-out being subjected to any kind of govern-mental pressure. The term “office of profit under the Government” used in Col: (a) of

Article 191(1) though indeterminate is an expression of wider import than a post held under the Government which is dealt with in Part XIV of the Constitution. For hold-ing an office of profit under the Govt. a person need not be in the service of the Government and there need not be any rela-tionship of master and servant between them. An office of profit involves two ele-ments namely, that there should be an office and hat it should carry some remun-eration. The true test of determination of the question whether a statutory corporation is independent of the Government depends upon the degree of control the Govt. has over it, the extent of control exercised by the several other bodies or committees over it and their composition, the degree of its dependence on Government for its financial needs and the functional aspect, namely, whether the body is discharging any import-ant Government function or just some func-tion which is merely optional from the point of view of Government.

The various provisions of the U.P. Basic Educa-tion Act (34 of 1972) and the Rules there-under show that the State Government exer-cises administrative disciplinary and financial control and in fact overall control over the U.P. Board of Basic Education and its employees.”

It would thus be found that this Ruling is of no assistance to the respondent.

33. The petitioner in his evidence has stated that he is paid conveyance allowance of Rs. 120 per month for attending duties at Headquarters. This allowance is thus for meeting out of pocket expenses for going from residence to the office. For visits outside Headquarters, he can claim T.A. and D.A. at the rates prescribed for Class I Officers. T.A. & D.A. bills are sanctioned after verification. He, however, does not derive any pecuniary gain. He does not receive any remuneration or payment at regular intervals. No contrary evidence is led on behalf of respondents. The learned advocate for the respondents has drawn my attention to the allotment of jeep to the petitioner for his use. However, the petitioner has produced the various Circulars in relation to the use of jeep. The petitioner has pro-duced Circular at Ex. 18 and the clauses therein clearly indicate that it was only for office use and nothing beyond that. It is available to all members of Home Guard Organisation. Similarly, he was also directed T.A. and D.A. bills strictly in terms of the orders and notifications issued by the Govern-ment. The learned Assistant Govt. Pleader has drawn my attention to Circulars Exhs. 19, 20 and 21 and he has stated that the petitioner is a Head of the Office and is entitled to pass several bills. On scrutiny of that notification Ex. 19, it would be seen that the payment regarding telephone bills, electricity charges, etc. are to be counter-signed by the petitioner. Nowhere there is an element of any

remuneration or fixed payment to the petitioner and hence there is total absence of element of profit or pecuniary gain.

34. The learned advocate for the respondent has stated that the petitioner is virtually an Assistant Commissioner of Police or the Additional Superintendent of Police, his T.A. and D.A. per year is Rs. 7,000, the annual total budget for Jalgaon Home Guards is about Rs. 25 lakh, and it is difficult to assume that the petitioner does not obtain any pecuniary gain. Now in the first instance, the Home Guard Force in Jalgaon District, according to the petitioner, comprises of 1950 members. When they are called upon for duty, they are paid T.A. and D.A. and in that light the annual budget of Rs. 25 lakhs cannot at all persuade me to hold that the petitioner derives any gain. The respondents have failed to bring any evidence on record to show that the petitioner is holding office of profit, although it is shown that he is holding office under the State Govt. Nothing is shown that he derives pecuniary gain from T.A. and D.A. There is thus an important element missing and that is "profit". The respondent no. 14 has, therefore, wrongly rejected the nomination and for that purpose and for no fault of the respondent no. 1, who is a returned candidate has to suffer penal consequences of being unseated under section 100(1)(c) of the Representation of People Act. There is no alternative left but to declare his election a null and void on the ground that the nomination of the petitioner has been wrongly and improperly rejected. The respondent no. 14 should have investigated into that aspect. It has been stated by the petitioner and accepted by the respondent No. 1, that none of the candidates objected to the candidature of the petitioner. For the foregoing reasons, therefore, the election petition has to be allowed. Accordingly, the following order.

ORDER

The election of respondent no. 1—Uttamarao Laxamrao Patil, as the Member of Parliament from 16-Erandol Lok Sabha Constituency is declared null and void under section 100 (1) (c) of the Representation of People Act. The intimation in this behalf be sent forthwith to the Election Commission and the Speaker of Lok Sabha. The authenticated copy of this judgment be sent to the Election Commission under section 103 of the Representation of People Act. There shall be no order as to costs. The amount of security deposit be returned, on application, to the petitioner under section 121 of the Representation of People Act.

नई दिल्ली, 28 फरवरी, 1991

आ.प्र. 44:—निर्वाचन आयोग वरमण श्री दीवजी गोगिबाई निर्वाचन क्षेत्र में लोक सभा के लिए श्री देवजी गोगिबाई टण्डेल के निर्वाचन को प्रश्नगत करने हुए 1990 की निर्वाचन प्रार्थी सं. 1 में मुम्बई उच्च न्यायालय के तारीख 25 अक्टूबर, 1990 वाले निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951, (1951 का 43) की धारा 106 के अनुसूचना में प्रकाशित करना है।

[सं. 82/द डी-नो-सं. 1/90]

एस. के. पाण्डे, अधिवक्ता

New Delhi, the 28th February, 1991

O.N. 44.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment dated 25th October, 1990 of the High Court of Judicature at Bombay in Election Petition No. 1 of 1990. Calling in question the election of Shri Devji Jogibhai Tandel to the House of the People from Daman & Diu Parliamentary Constituency.

[No. 82/DD-HP/1/90]

S. K. PANDEY, Under Secy.

IN THE HIGH COURT OF JUDICATURE

AT BOMBAY

ORDINARY ORIGINAL CIVIL
JURISDICTION

Election Petition No. 1 of 1990

Gopal Kalyanbhai Tandel,

...Substituted Petitioner.

Vs.

Devji Jogibhai Tandel & Anr.

.. Respondents.

Coram : Variave J.

Dated : 25-10-1990.

Shri J. V. Dave for Petitioner.

Shri H. J. Thakkar with Mr. D. Shah for Respondent No. 1.

Shri R. M. Agarwal for Respondent No. 2.

P. S. :

In view of the Judgment dated 23rd and 25th October, 1990 in Election Petition No. 2 of 1990, no order on this Election Petition. No order as to costs.

Sd/- A. J. CHOKSHI

Seal.